

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



**V**

**MML Investors Services LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages/commissions  
RSA 275:42 I/II employee/employer relationship

**Employer:** MML Investors Services LLC, 1295 State St, Springfield MA 01111

**Date of Hearing:** March 15, 2016

**Case No.:** 52126

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$1,750.00 in unpaid commissions due after his separation from employment on February 1, 2015. The claimant maintains he is an employee, not an independent contractor.

MML Investors Services LLC (hereafter "MMLIS") denies the claimant is an employee under the contract signed by both parties. Further, under the same contract, the claimant is not eligible for compensation once his contract is terminated. Finally, the claimant is bound by arbitration through the Financial Industry Regulatory Authority (FINRA) in section 14 of the contract.

MML Investors Services LLC produced new commission information at the hearing. The parties were provided an opportunity to respond to the information after the date of the hearing. All parties provided timely responses as required by the Department.

**FINDING OF FACT**

The parties executed a Sales Representative's Agreement on January 18, 2012. Section 14 Arbitration (a) of the contract reads, in relevant part, "Representative is agreeing to arbitrate any dispute, claim or controversy that may arise between him/her and his/her firm, or a customer, or any other person....."

**CONCLUSIONS OF LAW**

RSA 275:50 and 275:51 V afford a claimant specific rights and privileges when he believes unpaid wages are due. 9USC2, the Federal Arbitration Act (FAA), which Circuit City Stores Inc v Adams 532 U.S. 105 (2001), found to include employment

agreements containing an arbitration clause such as the claimant's, is preemptive of RSA 275:51 V. Under this holding of Circuit City Stores Inc v Adams, the Federal Arbitration Act holds that an employment agreement which contains an arbitration clause to be "valid, irrevocable, and enforceable." This conclusion is bolstered by Barclay Perry and James Johnston v Kenneth Morgan Thomas 482 U.S. 483 (1987), in which the court opined "...under the effect of the Supremacy Clause, the State statute must give way", discussing the preemptive effect of the Federal Arbitration Act.

The claimant is preempted from his right to file this Wage Claim with the New Hampshire Department of Labor pursuant to RSA 275:51 V, and is required to comply with the arbitration clause contained in his Sales Representatives Agreement.

### **DECISION**

As this Department concludes that it does not have jurisdiction under RSA 275:51 V due to the existence of an arbitration clause in the claimant's employment agreement and the preemptive status given the arbitration clause over State statute by the Federal Arbitration Act, it is hereby ruled the Wage Claim is invalid due to a lack of jurisdiction by this Department.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: May 3, 2016

Original: Claimant  
cc: Employer  
Attorney

MJD/aph